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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED

2008 AUG 21 AM 9:34

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff

vs.

Xavier Ivan ULLOA-Luna
Defendant.

Magistrate's Case Number: CNH DEPUTY

'08 MJ 2572

COMPLAINT FOR VIOLATION OF:

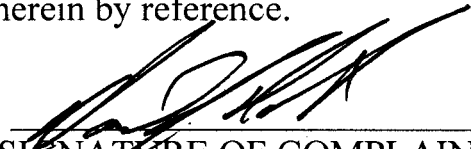
Title 21, United States Code
Section(s) 952 and 960-
Unlawful Importation of a Controlled
Substance (Felony):

The undersigned complainant being duly sworn states:

COUNT ONE

That on or about August 19, 2008, within the Southern District of California, defendant Xavier Ivan ULLOA-Luna did knowingly and intentionally import approximately 1256.40 kilograms of marijuana, a schedule I controlled substance, into the United States from a place outside thereof; in violation of Title 21, United States Code, Sections 952 and 960.

And the complainant states that this complaint is based on the attached statement of facts, incorporated herein by reference.


SIGNATURE OF COMPLAINANT
U.S Immigration and Customs Enforcement
Special Agent Manuel Martinez

Sworn to before me and subscribed in my presence this 21 day of August, 2008.


UNITED STATES MAGISTRATE JUDGE

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8/21/08
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United States of America

vs.

Xavier Ivan ULLOA-Luna

{STATEMENT OF FACTS}

I, Special Agent Manuel J. Martinez, declare under penalty of perjury, the following is true and correct.

These facts are based on my personal participation in this investigation and on written and oral statements received from other law enforcement officers. I submit that the facts contained in this statement demonstrate that probable cause exists to believe that the Defendant named in the attached complaint committed the crimes charged in the complaint.

On August 19, 2008, at approximately 6:00 P.M., Xavier Ivan ULLOA-Luna applied for entry into the United States from Mexico at the Otay Mesa Commercial Port of Entry. ULLOA-Luna was the operator of a 1999 Kenworth semi-tractor bearing California license plate 9E19885 in combination with a 1996 Great Dane trailer bearing California license plate 1VL1436. ULLOA-Luna presented a DSP-150 Visa Border Crosser Card and manifest entry number AM40834958 manifesting produce to U.S. Customs and Border Protection Officer (CBPO) Mathew Parker. CBPO Parker noticed that his Gafete (a CBP issued identification card for truck drivers) was ready to expire at the end of the month. CBPO Parker referred the driver to the service counter to pay a user fee to the United States Department of Agriculture for an agriculture inspection.

CBPO Agriculture Specialist Lapitan met ULLOA-Luna at dock space #82 and informed him to offload 100% of the merchandise that was said to contain various types of produce. CBPO Lapitan called via radio for Canine Enforcement Officer (CEO) Norman Sloat to screen the trailer on dock space #82. CBPO Thuthuy Nguyen arrived at Dock space #82 and called out for the driver of space #82 and ULLOA-Luna responded to his name. ULLOA-Luna was informed by CBPO Nguyen to wait at the informal dock with the rest of the truck drivers. CBPO Nguyen inspected several of the boxes from the first pallets that were off loaded and proceeded to the pallets closest to the front wall of the trailer. CBPO Nguyen noticed that the boxes towards the front wall were packaged differently and probed a box that was said to contain cilantro and but was unable to probe through it. CBPO Nguyen utilized a knife to cut through the cilantro and discovered a dark package underneath the cilantro containing an unknown substance. CBPO Nguyen asked CEO Sloan to utilize his Human/Narcotics Detector Dog (NHH) which alerted to the presence of a narcotic odor and responded by sitting down. CBPO Nguyen went back to the informal dock to look for ULLOA-Luna and was unable to find him. At approximately 6:45 P.M., ULLOA-Luna attempted to exit the Otay Mesa Commercial

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Facility through the pedestrian gate. CBPO Robert Saldana asked ULLOA-Luna where he was going and ULLOA-Luna told CBPO Saldana that he had to go to the Otay Mesa Port of Entry to get an I-94 permit. CBPO Saldana questioned ULLOA-Luna as to where his tractor was parked and ULLOA-Luna told him that it was parked by space #25. CBPO Saldana informed ULLOA-Luna that he could not exit the compound on foot and he needed to go back to his tractor and exit by driving out of the compound. CBPO Russel Kacy observed ULLOA-Luna walking back towards his tractor and at which time he was apprehended and taken to the security office where a pat down was conducted which yielded negative results. CBPO Romero informed SCPO Garcia and CBPO Hua regarding the discovery of marijuana on ULLOA-Luna truck. CBPO Hua then called Senior Special Agent (SS/A) Manny Martinez; the assigned duty agent for cargo cases. CBPO Romero turned ULLOA-Luna over to SS/A Martinez at approximately 8:30 P.M. and continued processing the load.

At approximately 10:50 P.M., ICE Senior Special Agents (SS/A) Manuel Martinez and Eveleen Cabrera removed ULLOA-Luna from the holding cell and went to the Otay Mesa Port of Entry to conduct an interview. At approximately 11:10 P.M., SS/A Martinez provided ULLOA-Luna with a pre-printed form in the Spanish language containing his Miranda rights. SS/A Martinez read the Miranda warnings to ULLOA-Luna in Spanish as witnessed by Eveleen Cabrera. ULLOA-Luna agreed to talk to agents and waived his Miranda rights and signed the pre-printed form. ULLOA-Luna declined to have the Mexican Consulate notified of his arrest.

ULLOA-Luna denied knowledge of importing marijuana into the United States.

ULLOA-Luna admitted after observing CBP officers breaking down the pallets, that he knew drugs were concealed in the cilantro boxes and that he then attempted to flee the commercial facility. ULLOA-Luna stated that he lied to CBP Saldana assigned to the pedestrian gate about going to get an I-94 permit at the Otay Mesa Port of Entry because he knew there was marijuana in the semi-tractor trailer. ULLOA-Luna stated that he was paid \$850.00 per trip for taking the produce from Ensenada, Mexico to the produce market located in Los Angeles, California.

At approximately 1:00 AM, CBPO Juan Romero informed SSA Cabrera a total of 328 packages containing marijuana were wrapped in black trash bags, cellophane, and foil paper were removed from the boxes weighing a total of 1265.40 kilograms.

ULLOA-Luna was arrested for violating Title 21, United States Code, Sections 952 & 960-Importation of a controlled substance. He was processed and booked into the Metropolitan Correctional Center, San Diego, California, pending federal judicial proceedings.



U.S. Immigration and Customs Enforcement
Special Agent Manuel Martinez